



MEMORANDUM

October 7, 2004

TO: Board of Directors
Eric Kuhn

FROM: Dan Birch

RE: Elkhead Update

INTRODUCTION AND BACKGROUND

In July we reported how we were nearing completion of several major milestones. At the time it appeared that over the course of the next six months we would steadily tick-off completions. As luck would have it, due to circumstances out of our control, this has not been the case, and we are now in the position of needing a number of major items to fall in place in the next two to three months. Nonetheless, we are still hopeful and optimistic we will be able to start construction in early 2005.

We request Board action on a number of items:

- **CWCB loan agreement;**
- **Ratification of the suite of Federal and State agreements;**
- **Ratification of the Amended and Restated Agreement (reservoir operations);**
- **Water Supply Agreement and Interim Water Supply Agreement with Tri-State.**

We also suggest delegating final approval of the CWCB loan agreement and the contract for the delta wetland mitigation contract to the Water Supply Projects Committee.

The draft of the CWCB loan agreement is attached. The rest of the agreements were not available in time for inclusion in your packet and we hope to be able to either send them to you under separate cover or, if need be, distribute them at the board meeting.

CWCB LOAN AGREEMENT

General Counsel has reviewed the loan agreement and has several substantive concerns. We would suggest the Board take preliminary action on the agreement, subject to revisions by Counsel, and delegate final approval to the Water Supply Projects Committee.

FEDERAL AND STATE AGREEMENTS

Our negotiating group met in August and went through the suite of agreements in detail making final revisions. The Bureau of Reclamation's solicitor flagged a couple of items needing higher review within her office. These were items related to indemnification and payment of late fees. We just heard from Colorado's attorney that the proposed indemnification language had been vetoed. Colorado will be working on another proposal.

The other news is that we are now being told the Federal agreements will not be signed until after the Yampa Programmatic Biological Opinion, which is discussed below, is complete. This will create a great deal of pressure to complete the PBO in a timely fashion.

AMENDED AND RESTATED AGREEMENT

The Board previously delegated approval of the Amended and Restated Agreement to the Water Supply Projects Committee, subject to ratification of the final agreement by the Board. The Committee has approved the draft agreement.

Subsequent to the Committee's approval, the agreement was sent for review by the rest of the Yampa Participants. We just learned today that all of the comments from the Yampa Participants have been received and are non-substantive in nature. We expect to have the final form of the agreement to you at or prior to the Board meeting and we are requesting the Board take final action on the agreement.

INTERIM WATER SUPPLY AGREEMENTS

As we have discussed previously, we need to put in place water supplies to replace the Elkhead supplies that will not be available to the Yampa Participants during construction. Tri-State has offered 7,000 acre-feet of their supply in Stagecoach Reservoir as part of the interim supply. In September we reported that Tri-State told us informally they wanted \$10/af/year for this supply, whether or not the water was released for use (take or pay). We submitted a draft agreement with these terms and similar to the agreement we reached with the Upper Yampa District for a 5,200 acre-foot supply.

Tri-State submitted some revisions of the water supply agreement and they also proposed an interim water supply agreement, which recognized and knit together the Tri-State supply and the Upper Yampa supply as forming the interim supply. We had several concerns with their draft and revisions and had a phone conference earlier this week with Tri-State representatives. Happily, we reached a conceptual understanding and David Hallford and Tim Beaton are working on revisions. Again, we hope to have a draft for Board consideration at or prior to the

Board meeting.

While we believe we have a conceptual understanding with Tri-State, the agreements as revised and drafted by Tri-State carry some measure of exposure to the River District and we have conditioned our conceptual understanding with Tri-State on review by the Board. This review would likely be best undertaken in executive session.

For example, the agreement is drafted so that Tri-State is not warranting the amount of the interim water supply is necessarily adequate to replace the more than 8,000 acre-feet available at Elkhead. Moreover, the River District is responsible for securing additional supplies if the 12,000 acre-feet is inadequate. While this represents a significant exposure to the River District, we think the actual risk is virtually nil since in the history of Elkhead, water was needed for release in only one year – 2002 – and in that year less than 2,000 acre-feet was needed.

Second, Tri-State has included a provision that they may recall their 7,000 acre-foot supply in the event of a compact call. Again, we think the risk of a compact call in the next three years is nil.

YAMPA PLAN AND PROGRAMMATIC BIOLOGICAL OPINION

In September we received a review draft of the Yampa Programmatic Biological Opinion and we submitted comments on the PBO last week. The PBO included some statements pertaining to Elkhead that were not correct. The PBO also included a rather inflammatory recommendation that the non-natives in Elkhead be lethally removed prior to the enlargement. We have reminded Recovery Program staff that this is clearly contradictory to the consensus reached in 1999 which provided local buy-in to the enlargement.

We also had an opportunity to review comments submitted by the Park Service and environmental representatives. Of particular concern, the environmental interests are urging a water depletion increment of 5,000 acre-feet instead of the 30,000 acre-feet agreed to and in the draft PBO. They cite the dramatic population declines of the last few years as the rationale for the change. We believe the declines stem from drought conditions and non-native competition, are not directly related to depletion effects, and can best be addressed by enlarging Elkhead to improve low flow conditions in the Yampa, which have been quite low in the past few years.

As we report above, the difficulty and the challenge is to resolve these issues and finalize then PBO so as not to delay the enlargement of Elkhead.

PROPERTY ACQUISITION

We understand the Greenwoods have signed and returned their agreement and as we previously reported, we have a conceptual understanding with Pat Turner. We would like to report on the status of our other negotiations in executive session.

The State Land Board public notice which begins the land exchange process, was published in mid-September. We will be submitting our application and bid for the exchange in the next

week.

FISH SCREENS

Earlier this year we finally received direction from the Recovery Program to design and construct screens on the new outlet to prevent escapement of non-native fish from the reservoir. We have done as requested and our final design includes the screens. Cost for the screens is on the order of \$700,000 and will be borne entirely by the Recovery Program.

Several weeks ago we spoke with the staff of the Recovery Program about what we would need to do to be reimbursed for our costs of designing and constructing the screens. The consensus was that no agreement was necessary and we could simply bill the program. This is what we did with permitting and engineering costs from 2001-2003.

We want to make sure the Board is comfortable with this approach. The alternative would be some form of agreement(s).

DELTA WETLAND MITIGATION

We made a commitment to the Corps of Engineers to accelerate the growth of our proposed delta wetlands by installing a series of check-dams to capture sediment from the three years of runoff before the reservoir fills. Sediment would otherwise be deposited at the level of the dead pool we are maintaining during construction.

We need to install the check dams prior to runoff, and just as important, during freezing conditions to facilitate transport of material and equipment to the site. The cost of this work is on the order of \$200,000.

We will be soliciting bids from local contractors to perform the work and will need to be awarding the work in December. We would suggest that the Board delegate approval of the award of this contract to the Water Supply Projects Committee.

SCHEDULE

Over the course of the next few months we will be putting in place the final approvals and execution of agreements while we are putting the project out to bid. This begs the question of what happens and what is the risk to the River District if there is some delay in obtaining approvals.

The risks to the River District occur if we have opened or awarded a contract and then incur a delay. We propose to manage this risk in two ways. First, if approvals are not received before we need to award the delta wetland contract, we would propose to postpone this work until the following year. Second, we would propose to delay opening bids for the main construction contract if we do not have needed approvals by mid-December. Under this circumstance, we would need to extend the time of completion of the construction another year until 2007.

Attachment